IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.2775 OF 1996**

Association of Workers
252, Janata Colony, Ram Narayan
Narkar Marg, Ghatkopar (East)
Bombay - 400 077 ... Petitioner

V/s.

1. Walchandnagar Industries Ltd.
Walchand Nagar, Dist.: Pune

2. IInd Labour Court
Pune ... Respondents

Mr.N.M. Ganguli for Petitioner
Mr.A.S. Karwande for Respondent No.1
Respondent No.2 - formal party.

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 31, 2004**

**ORAL JUDGMENT:**

. This Petition challenges the award part I holding that the enquiry instituted against the respondent-workman was legal, fair and proper and award part II dismissing the Reference.

2. One D.D.More, member of the Petitioner, which is the Union representing the workers employed with Respondent No.1, was employed as an Assistant Fitter in the Maintainance Department from 1973 onwards. He was issued a chargesheet dated 19.2.1986 alleging that he had committed an act of misconduct by refusing to carry

out the work of roller chipping. The chargesheet was issued alleging that he had committed an act of willful insubordination and also had committed an act subversive of discipline and behaviour. It was alleged that he had refused to work as roller chipper despite being appointed as an Assistant Fitter. Consequent upon the enquiry officer finding him guilty in the enquiry instituted against the workman More, his services were terminated by way of dismissal on 5.5.1986. Since there was a reference pending before the Industrial Tribunal regarding payment of bonus, an application under section 33(2)(b) of the Industrial Disputes Act was filed. That application came to be disposed of. In the meantime, the Petitioner-Union had raised a dispute on behalf of the workman More for reinstatement and continuity of service w.e.f. 5.5.1986 which was referred for adjudication before the Labour Court.

3. In the statement of claim, the Petitioner contended that the enquiry conducted against the workman was completed in haste and in contravention of the principles of natural justice and the standing orders applicable. It was also contended that the findings of the Enquiry Officer were perverse. Furthermore, it was contended that the workman was not required to do the work of roller chipping as that was the work to be performed by a workman in the category of chippers. In

the written statement, the contention of the Petitioner that the person who had issued the chargesheet, was not authorised to do so, has been denied All other contentions in the statement of claim were denied in the written statement. By award part I, the Labour Court came to the conclusion that the enquiry held was fair and proper. The Labour Court came to the conclusion that sufficient opportunity had been granted to the workman to defend his case. However, there was no finding in respect of the vagueness of the chargesheet. The Labour Court also held that since the workman did not raise any objection before the enquiry officer that the chargesheet had not been issued by a legally authorised person, the Labour Court has not considered this submission of the Petitioner. By award part II, the Labour Court came to the conclusion that the workman had earlier been suspended for the same act of misconduct for four days. The Labour Court found that the workman had persisted in refusing to comply with the orders of his superiors despite having given an undertaking to that effect. The Labour Court therefore, came to the conclusion that the findings of the Enquiry Officer that the workman had committed a misconduct must be accepted. The Labour Court has then held that the work of an Assistant Fitter included the work of chipping. The Labour Court has considered the report of the job evaluation conducted by the National

Productivity Council which in its report has stated the different categories of workmen and the job specifications. The job of an Assistant Fitter included the job of chipping. The Labour Court has relied on this report and has found that the allegations against the workman had been proved since the chipping was a part and parcel of the job of an Assistant Fitter. The Labour Court has then considered his past service on record and has found that no indulgence could be shown to the workman when despite the undertaking given just a few days prior, he had committed the same act of misconduct. It is these awards which are challenged in the present writ petition.

4. Mr.Ganguli, learned Advocate for the Petitioner, submits that the order issued to the workman to do the work of chipping was not a lawful order as the trade of chipping and that of an Assistant Fitter are two different trades. He submits that there is no evidence on record to show that the Assistant Fitter is required to perform the job of chipping. In such a case, according to the learned Advocate, the workman was well within his rights to refuse the order since it was not a lawful order. He then submits that the Labour Court has not considered the provisions of section 11A while concluding that the workman was not entitled to reinstatement. He submits that the undertaking given by

the workman did not include any statement to the effect that he was willing to do the work of chipping although employed as an Assistant Fitter. He, therefore, submits that both the awards are required to be set aside. In respect of the award part I, he submits that M.W. Pujari who has issued the dismissal order had not been authorised nor was he the Manager under the Standing Orders. Similarly the chargesheet was issued by a person who was not authorised. Therefore, both the chargesheet and dismissal order are bad in law.

5. The learned Advocate for Respondent No.1 submits that the job of chipper is included in the job of Assistant Fitter. He submits that the workman had committed the same act of misconduct on 19.6.1985 when he was suspended for four days. Despite an undertaking being given by the workman to work as per the Rules and Regulations, the workman had refused to do so and it was therefore, necessary to chargesheet him and dismiss from service. The learned Advocate then submits that the workman had expired on 20.3.1996. Therefore, the question of reinstatement does not arise. He further submits that there is no perversity in the findings of the Labour Court and this Court should not, under Article 226 of the Constitution of India, interfere with the awards of the Labour Court.

6. Heard Advocates. The submission of Mr.Ganguli that the chargesheet and the dismissal orders are not issued by the authorised person is not borne out from the documents on record. The chargesheet dated 19.2.1996 has been signed by the Manager under the Standing Orders and copy of the same was served to the Department in charge. Similarly, the dismissal order has been signed by the Manager under the Standing Orders and hence, no grievance can be made about these two documents.

7. The submission of Mr.Ganguli that although an Assistant Fitter and a chipper are semi-skilled workmen, the trades are different and, therefore, an Assistant Fitter cannot be required to work as a chipper needs consideration. The report of the National Productivity Council which has been exhibited at Exhibit 14 before the Labour Court is merely the report given by the Council as a consequence of the settlement between the petitioner and the management for classification of the workman. However, there is nothing on record to indicate that this report has either been accepted by both the parties or that both the parties consented to the same being implemented. If that be the position, the Labour Court ought not to have held that the workman was expected to work as a chipper only on the basis of the report. Therefore, the findings of the Labour Court

in this respect must be set aside. The entire reasoning of the Labour Court shows that the conclusion has been reached on the basis of the report of the National Productivity Council. Furthermore, the evidence of one of the witnesses who stated before the Enquiry Officer that the workman had refused to do the work of chipping also does not take the respondent's case any further. If chipping is not the work of an Assistant Fitter then there was no need for the workman to obey an order requiring him to do the work of chipping. Therefore, the award of the Labour Court finding that the workman had committed a misconduct must be set aside.

8. Furthermore, the workman according to the learned Advocate for the respondent has expired on 20.3.1996. His heirs would, therefore, be entitled to the backwages and consequential benefits upto the date of the death of the workman.

9. In view of this, the award part I is confirmed and award part II is set aside. The amount of backwages and consequential benefits shall be paid to the heirs of the respondent within eight weeks from today.

10. Writ Petition is disposed of accordingly.